

**Supporting Statement for
Coal Washing and Transportation Allowances
(Forms MMS-4292 and MMS-4293)
(OMB Control Number 1010-0074)
(Expiration Date: August 31, 2001)**

A. Justification

1. What circumstances make this collection of information necessary?

The Secretary of the Interior (Secretary) is responsible for the collection of royalties from lessees who produce minerals from Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands, to collect the royalties due, and to distribute the funds in accordance with those laws. Applicable citations include 30 U.S.C. 396d and 25 U.S.C. 2103(e) pertaining to Indian lands on which solid minerals are produced (Attachment 1). The product valuation and allowance determination process is essential to assure that the Indians receive payment on the full value of the minerals removed.

The Minerals Management Service (MMS) performs the royalty management functions for the Secretary. When a company or an individual enters into a contract (a lease) to develop, mine, and dispose of coal deposits from Indian lands, that company or individual (the lessee) agrees to pay the royalties on the sale of production from the leased lands. Royalty rates are specified in the lease instrument.

The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data a lessee would report to other private mineral interest owners and is generally available within the records of the lessee or others involved in the development, transportation, processing, purchasing, or selling of such minerals. The information collected includes data necessary to assure that the royalties paid are appropriate.

In order to determine whether the amount of royalty tendered represents the proper royalty due, it is necessary to establish the value of the coal being sold or otherwise disposed of in some other manner (for example, used by the lessee). Under some

circumstances the lessee may be authorized to deduct certain costs in the calculation of royalties due. An allowance may be granted to compensate the lessee for the reasonable actual cost of washing the royalty portion of the coal. Also, when the sales point is not in the immediate vicinity of a lease or mine area, an allowance may be granted to compensate the lessee for the reasonable actual cost of transporting the royalty portion of the coal to a sales point not on the lease or mine area.

We developed the Coal Washing Allowance Report, Form MMS 4292, and the Coal Transportation Allowance Report, Form MMS-4293, for industry use when reporting or requesting a washing or transportation allowance. Historically, the lessee requested approval of royalty deductions by submitting a letter, which provided information enabling the Government to evaluate the reasonableness of the deductions. Under the product value regulations at 30 CFR 206, Subpart J, Indian Coal (Attachment 2), we normally accept costs incurred under arm's-length contracts for transportation and/or washing coal. (An arm's-length contract is a contract or agreement, between independent, nonaffiliated persons with opposing economic interest regarding that contract.) The regulations further provide that we normally accept the contract sales prices arrived at by the lessee in their arm's-length contract as being representative of value for ad valorem leases (30 CFR 206.456).

In those instances when Indian royalty coal is washed or transported under non-arm's-length conditions, it is necessary for us to obtain cost data. This enables us to accurately determine if the lessee correctly computed the coal value and the gross proceeds for royalty calculation purposes.

Indian tribes and allottees receive all royalties generated from Indian lands. Both groups have expressed concern that the Department of the Interior (DOI) ensure they receive the proper royalty amount. Failure to collect the data described in this information collection could result in the under-valuation of the minerals and render it impossible for the Secretary to fulfill his/her statutory and trust responsibilities to the Indians. The information that is collected under this ICR is essential for the royalty valuation process.

2. How, by whom, and for what purpose will the information be used?

The Secretary is obligated to collect royalty on minerals removed from Indian lands based upon value. However, in no event can royalty be computed on less than the gross proceeds that accrue,

or could contractually accrue, to the lessee. MMS, acting for the Secretary, uses the information collected to assure that royalties reported and paid are based upon correct product valuation. We use the collected information, as do other Federal Government and State entities, for audit purposes and to evaluate the reasonableness of product valuation or allowance claims submitted by lessees. The determination of the appropriate product value or allowance rate directly affects the royalties due. Failure to collect such data would prevent the Secretary from accomplishing his/her statutory and trust responsibilities.

Regulations at 30 CFR 206.457 and 206.458 provide that in determining coal value for royalty purposes, a lessee may take a deduction for the reasonable actual costs incurred to wash the coal. For washing costs incurred by a lessee under an arm's-length contract, the allowance is the reasonable costs incurred for washing the coal under that contract. MMS approval is not required to take the allowance. However, the Indian lessee must submit page 1 of Form MMS-4292, not later than the same month the washing allowance is first reported on the Report of Sales and Royalty Remittance, Form MMS-2014 (OMB Control Number 1010-0022), estimating the tons of coal washed, rate per ton, and allowance to be taken during the allowance period.

The washing allowance is effective for a 12-month period or until the washing contract terminates, whichever comes first, at which time the lessee must resubmit page 1 of Form MMS-4292 reporting actual tons washed, rate, and allowance taken during the period. Information required includes the lessee's name and address, the payor code, accounting identification (AID) number, product code and selling arrangement code as reported on Form MMS-2014, and estimated or actual production and allowance claimed.

If the lessee has a non-arm's-length washing contract or has no contract, the washing allowance is based on the lessee's reasonable, actual costs. Our approval is not required to take the allowance. However, the lessee must use Form MMS-4292 in its entirety to submit estimated washing costs the same month the washing allowance is reported on Form MMS-2014. The allowance is effective for a 12-month period, at the end of which the lessee must resubmit a completed Form MMS-4292 with actual washing costs. MMS must receive the form within 90 days after the end of the previous reporting period, unless MMS approves a longer period. Thus, Form MMS-4292 is used to report both an estimated allowance to be used for a new 12-month period, and the royalty washing allowance rate based on the lessee's portion of the actual plant operating, maintenance, and overhead expenditures for the prior 12-month reporting period.

Regulations at 30 CFR 206.460 and 206.461 provide that where the royalty value of the coal has been determined at a point remote from the lease or the mine, we will allow a deduction for the reasonable, actual costs incurred to transport the coal to a sales point or to a washing facility remote from the mine or lease. As with the washing allowance, our approval is not required to deduct transportation costs; however, under arm's-length contracts, an Indian lessee must submit page 1 of Form MMS-4293 with estimated costs no later than the same month the allowance is reported on Form MMS-2014. Under a non-arm's-length contract, the lessee must complete the entire form providing estimated transportation, operating, maintenance, and overhead expenses. The allowance is effective for a 12-month period or until the transportation contract terminates. After the initial reporting period, the lessee must resubmit Form MMS-4293 in its entirety for non-arm's-length contracts, or page 1 of the form for arm's-length contracts, providing actual costs incurred during the previous reporting period. We must receive the form within 90 days after the end of the previous reporting period, unless we approve a longer period.

Coal transportation allowance reporting may be straightforward and simple or may be quite complex. In some cases, coal may be transported from point-to-point using a single mode of transportation such as truck, rail system, conveyor belt, pipeline, slurry-line, barge or ship. In other instances coal may travel over several segments of a route using multiple transport methods during the same trip. The reporting can be further complicated through the use of combinations of lessee-owned transport systems and other systems under non-arm's-length and/or arm's-length contracts, or both. Each segment must be considered separately and evaluated for the reasonableness of cost.

MMS is seeking OMB's approval for a revision of Forms MMS-4292 and MMS-4293 (Attachment 3). These revisions are necessary to make the information collected on these forms compatible with the new Form MMS-4430, Solid Minerals Production and Royalty Report (OMB Control Number 1010-0120). This new form is the result of a major reengineering of MMS's financial and compliance processes. For example, during the reengineering initiative, MMS decided to eliminate the reporting of accounting identification (AID) numbers and selling arrangement numbers. In their place, MMS is requiring lease numbers. Forms MMS-4292 and MMS-4293 will continue to have the same number of columns to be completed and similar data to be provided by the lessee so we do not anticipate any changes in burden hours associated with these forms. The

revised forms will become effective and replace the existing forms on or about January 1, 2002, when our new financial and compliance system is fully operational.

3. Does the collection of information involve the use of information technology? If so, does it reduce the burden and to what extent?

Forms MMS-4292 and MMS-4293 are not automated because we receive only one submission of each form each year and designing a computer system to process one form is not cost effective. However, our Government Paperwork Elimination Act implementation plan indicates that we are evaluating these forms to assess the risks and costs of conversion. We will, if at all feasible, offer an electronic alternative for submitting this data by October 2003.

4. Describe efforts to identify duplication. Can similar, available information be used or modified for this collection?

With respect to washing costs and transportation costs, we found that no other Federal or State agency collects the same or similar information. No other adequate information is available which can be used to make appropriate product valuations or to determine the reasonableness of coal washing or transportation allowances.

5. What is the agency doing to minimize the burden on small businesses or other small entities?

Small organizations are among the potential respondents. MMS carefully analyzed its requirements to ensure the requested information is the minimum necessary and places the least possible burden on industry. There are no special reporting provisions for small organizations. MMS provides toll-free telephone assistance and periodic training.

6. What are the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently? Are there technical or legal obstacles to reducing the burden?

No other information exists outside of the files of the individual applicants pertaining to their transportation and/or washing costs. Although some coal sales prices are publicly available from other sources, those prices are not current and do not reflect all monies received from the sale of Indian coal.

Also, such information does not meet the rigid standard that prices for non-arm's-length contracts be within the range of other arm's-length contract prices for like-quality coal sold at about the same time in the same area. Therefore, other sales data are not appropriate and cannot be substituted or modified for product valuation purposes.

7. Are there any special circumstances that require exceptions to 5 CFR 1320.5(d)(2)(i) through (viii)?

There are no special circumstances with respect to 5 CFR 1320.5(d)(2)(i) through (viii) except as follows:

(i) Forms MMS-4292 and 4293 are submitted on a calendar year basis. Allowance forms may be submitted more than quarterly if washing or transportation costs increase or decrease sufficiently to require a recalculation of the unit cost; and

(iv) Records required by the Secretary relative to Indian leases must be maintained indefinitely.

This collection is not a statistical survey and does not use statistical data classification; nor does it include a pledge of confidentiality not supported by statute or regulation or require proprietary, trade secret, or other confidential information not protected by agency procedures. Our procedures provide strict security measures to control the use, storage, and access of such information.

8. What efforts did the agency make to consult with the public and a representative sample of respondents?

As required in 5 CFR 1320.8(d), MMS published a 60-day review and comment notice in the Federal Register on November 9, 2000 (65 FR 67399) (Attachment 4). We did not receive any comments.

9. Will payment or gifts be provided to respondents?

There will not be any payment or gifts to respondents.

10. What assurance of confidentiality is provided to respondents?

Commercial or financial information submitted to DOI relative to minerals removed from Federal or Indian leases may be proprietary. The Indian Minerals Development Act of 1982 (25 U.S.C. 2103) provides that all information related to any Indian

minerals agreement covered by the Act in the possession of DOI must be held as privileged proprietary information. Storage of such information and access to it is controlled by strict security measures.

11. Does the information collected include any questions of a sensitive nature?

None of the information requested is considered sensitive.

12. What is the estimated reporting and recordkeeping "hour" burden of the collection of information?

Only one Indian lessee at present is required to submit coal allowance forms. The lessee submits Form MMS-4293 for one lease providing an annual estimate of transportation expenses and reporting prior period actual expenses. We estimate that the annual reporting burden per year for preparing and submitting the Form MMS-4293 is 2 hours. The lessee also submits Form MMS-4292 providing annual coal washing expenses. We estimate an annual reporting burden of 2 hours per year for preparing and submitting Form MMS-4292. There are no recordkeeping requirements. Using an estimate of \$50 per hour, we estimate the annual cost to the industry to prepare and submit the required information is \$200.

The following chart lists the components of the burden estimate:

Citation	Reporting Requirement	Burden Hour per Response	Annual Number of Responses	Annual Burden Hour
§ 206.458 (a)(1), (b)(1), (c)(1)(i) & (iii), (c)(2)(i) & (iii)	<p>Arm's-length contracts. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4292, Coal Washing Allowance Report . . .</p> <p>Non-arm's-length or no contract. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4292 . . .</p> <p>Arm's-length contracts. . . . the lessee shall submit page one of the initial Form MMS-4292 prior to, or at the same time, as the washing allowance determined pursuant to an arm's-length contract is reported on Form MMS-2014, Report of Sales and Royalty Remittance . . . After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS-4292 . . .</p> <p>Non-arm's-length or no contract. . . . the lessee shall submit an initial Form MMS-4292 prior to, or at the same time as, the washing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS-2014, Report of Sales and Royalty Remittance . . . For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS-4292</p>	2	1	2

	containing the actual costs for the previous reporting period. If coal washing is continuing, the lessee shall include on Form MMS-4292 its estimated costs for the next calendar year.			
§ 206.461 (a)(1), (b)(1), (c)(1)(i) & (iii), (c)(2)(i) & (iii)	<p>Arm's-length contracts. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4293, Coal Transportation Allowance Report . . .</p> <p>Non-arm's-length or no contract. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4293 . . .</p> <p>Arm's-length contracts. . . . the lessee shall submit page one of the initial Form MMS-4293 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS-2014, Reports of Sales and Royalty Remittance . . . After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS-4293 . . .</p> <p>Non-arm's-length or no contract. . . . the lessee shall submit an initial Form MMS-4293 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS-2014, Report of Sales and Royalty Remittance . . . For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS-4293 containing the actual costs for the previous reporting period.</p>	2	1	2
	Total	4	2	4

13. What is the estimated reporting and recordkeeping "non-hour cost" burden of the collection of information, excluding any costs identified in Items 12 & 14?

We have identified no "non-hour cost" burden associated with this information collection.

14. What is the estimated annualized cost to the Federal Government?

MMS requires 1/2 hour to file, review, and process each single response received. Using a cost estimate of \$50 per hour, we estimate the annual cost to the Federal Government for this information collection is \$50.

15. Are there any program changes or adjustments reported in Items 13 or 14 for the Form OMB 83-I?

The currently approved OMB Inventory includes 10 burden hours in Item 13 of the Form OMB 83-I. The total annual burden for this

information collection is 4 hours. The decrease of 6 burden hours is the result of a lower estimate of the number of respondents filing this information collection. There is no cost burden requested in Item 14.

16. Are there plans for tabulation and publication of the results of the information collection?

The data collected will not be tabulated and published for statistical use.

17. Is the agency seeking approval to not display the expiration date?

No. We will display the expiration date of OMB's approval on Forms MMS-4292 and MMS-4293.

18. Are there exceptions to the certification statement in Item 19 of Form OMB 83-I?

To the extent the topics apply to this collection of information, we are not requesting exceptions to the "Certification for Paperwork Reduction Act Submissions."

B. Collection of Information Employing Statistical Methods.

This section is not applicable. We will not employ statistical methods in this information collection.